83-2070

NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

FIRST LEASING CORPORATION,

Petitioner,

vs.

PATRICIA ANN BROTHERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the leasing of an automobile is a "credit transaction" and, therefore, within the ambit of the Equal Credit Opportunity Act, 15 U.S.C. Sections 1691 through 1691f.

2. Whether it was error for the Ninth Circuit Court of Appeals to hold that the Equal Credit Opportunity Act applies to consumer leases when the staff of the Federal Reserve Board has issued unofficial interpretations stating that the Equal Credit Opportunity Act does not apply to leases.

3. Whether it was error for the Ninth Circuit Court of Appeals to determine that the proposed lease between Brothers and First Leasing was a consumer lease.

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IN THE SUPREME COURT OF THE UNITED STATES

FIRST LEASING CORPORATION,

Petitioner,

vs.

PATRICIA ANN BROTHERS,

Respondent.

Petitioner respectfully files this Petition for a Writ of Certiorari.

OPINIONS AND ORDERS BELOW

Summary judgment was granted in the United States District Court for the Northern District of California in favor of Petitioner FIRST LEASING CORPORATION. (Appendix p. 43.) Respondent PATRICIA ANN BROTHERS then appealed and the Ninth Circuit Court of Appeals, in a sharply divided opinion (724 F.2d 789, amended), overruled the District Court. (Appendix

p. 1.) Petitioner's Petition for Rehearing and Request for Rehearing En Banc was denied (Appendix p. 41). However, the majority did amend its opinion, we believe, in response to the arguments presented in the Petition for Rehearing. (Appendix p. 38.)

JURISDICTION

This action was brought in the United States District Court for the Northern District of California pursuant to the federal question jurisdiction vested in that Court under 28 U.S.C. Section 1331 (1982). The judgment of the District Court was properly before the United States Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. Section 1291 (1982).

The date of the Ninth Circuit Court of Appeals judgment to be reviewed is January 24, 1984. That Court's order denying

rehearing on the appeal was entered on March 26, 1984.

Because the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court, and pursuant to the jurisdiction vested in the United States Supreme Court under 28 U.S.C. Sections 1254(1) and 2101(c) (1982), the Supreme Court may review the Court of Appeals judgment by Writ of Certiorari.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Truth in Lending Act, 15 U.S.C. Sections 1601 through 1666j (1982).

The Consumer Leasing Act, 15 U.S.C. Sections 1667 through 1667e (1982).

The Equal Credit Opportunity Act, 15 U.S.C. Sections 1691 through 1691f (1982).

Regulation B, 12 C.F.R. Section 202 (1983).

Regulation M, 12 C.F.R. Section 213 (1983).

Regulation Z, 12 C.F.R. Section 226 (1983).

All sections of these statutes and regulations which are specifically involved in the determination of the issues presented are set forth in full in the text or in the Appendix.

STATEMENT OF THE CASE

Respondent PATRICIA ANN BROTHERS, hereafter "Brothers," alleged that on January 25, 1982, she completed and submitted to Petitioner FIRST LEASING CORPORATION*, hereafter "First Leasing," an application for the lease of an automobile.

*First Leasing Corporation is an affiliate of Alameda First National Bank. Alameda Bancorporation, Inc., is the parent corporation of First Leasing Corporation and Alameda First National Bank. First Leasing Corporation has no subsidiaries.

Since no lease was ever entered into between Brothers and First Leasing, none of the terms and conditions of a vehicle lease were agreed upon. Nevertheless, the following information as to the subject matter and some of the proposed terms and conditions of the contemplated lease can be determined from the Declaration of George Lyon and the handwritten lease application form attached to it (Appendix p. 45) which were filed in support of First Leasing's Motion to Dismiss.

Brothers sought to lease a Mercedes Benz 300 Diesel Turbo automobile, Model Year 1982, for a term of forty-eight months. In exchange for the use, possession and enjoyment of the automobile, she was to pay a monthly rental of $339.17. The retail value of the automobile at the commencement of the lease was $27,500.

Had Brothers entered into the lease and fully performed thereunder, she would have paid approximately $16,280.16 for the use of the Mercedes for four years. The residual value of the Mercedes at the end of the lease term would have been approximately $15,400.

First Leasing reviewed Brothers' application and obtained credit reports on Brothers and her husband, Mr. Garske.

Mr. Garske's credit report showed that he had previously been adjudged a bankrupt. Based primarily on his bankruptcy, but also based upon other information Brothers had supplied, First Leasing turned down Brothers' lease application, and notified her of its decision by letter.

Brothers then filed a complaint for money damages pursuant to the Equal Credit Opportunity Act, hereafter "ECOA," 15 U.S.C. Sections 1691 through 1691f (1982).

First Leasing filed a motion to dismiss the complaint which was heard by Judge Schnacke on October 1, 1982. The District Court treated the motion as one for summary judgment and held that the ECOA did not apply to the leasing of an automobile.

Brothers then appealed. After the matter was fully briefed and argued, the Court of Appeals filed a majority and a dissenting opinion on January 24, 1984.

In the majority opinion, the Court treated the issue as being whether the ECOA applied only to the Truth in Lending Act, 15 U.S.C. Sections 1601 through 1666j (1982), or whether it also applied to the Consumer Leasing Act, hereafter "CLA," 15 U.S.C. Sections 1667 through 1667e (1982).

The Court of Appeals recognized that this is a case of first impression. The question is one which has considerable

impact upon automobile leasing and other leasing businesses, industries of economic significance throughout the United States. In the State of California alone, it is estimated that between thirty-five and forty percent of all new car registrations occur in transactions in which the automobile is leased. The effect of the Court of Appeals decision is to negate legislative and practical distinctions between automobile credit purchases and leases. The logical extension of that Court's decision will be to eradicate all distinctions between leases and credit purchases and to undercut state and federal legislation which now regulate these two distinct forms of transactions.

AUTHORITIES IN SUPPORT OF AND REASONS FOR GRANTING OF THIS PETITION

1. The Leasing Of An Automobile Is Not A "Credit Transaction" And Not Within The Ambit Of The Equal Credit Opportunity Act.

The Consumer Credit Protection Act, 15 U.S.C. Sections 1601-1693r (1982), is the name given to the umbrella federal act which governs consumer credit transactions and consumer leases. Those parts of the regulatory scheme relevant here are:

15 U.S.C. Sections 1601 through 1666j (1982), popularly known as the Truth in Lending Act. These sections contain general provisions and definitions governing credit transactions, credit advertising and credit billing.

15 U.S.C. Sections 1667 through 1667e (1982), the Consumer Leasing Act, governs the lease of personal property for personal, family or household use.

15 U.S.C. Sections 1691 through 1691f (1982), the ECOA, is a statute designed to prohibit discrimination in credit transactions on the basis of sex or marital status, as well as other factors.

It is helpful to review the sequence of enactment of these sections in order to understand their relationship to each other. To that end, First Leasing quotes from the dissenting opinion rendered in the Ninth Circuit by Judge Canby:

> In 1968, Congress passed the Truth in Lending Act, 15 U.S.C. §§1601-1666j. That Act imposed extensive requirements of disclosure to be made by creditors in connection with "consumer credit transactions." Id. at §1631. "Credit" as used in that phrase was defined as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." Id. at §1602. It was clear from the legislative history that Congress did not intend this definition to apply to lease transactions, see majority opinion n. 5, and the Truth in Lending Act was not so applied.
>
> In 1974, Congress enacted the Equal Credit Opportunity Act, 15 U.S.C.

§§1691-1691f (1982). That Act forbade discrimination on the basis of sex or marital status with respect to any aspect of a "credit transaction." "Credit" was defined as "the right granted by a creditor to [sic] debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." Except for the addition of language to cover credit sales, this is the same definition that was contained in the Truth in Lending Act. Not surprisingly, there does not appear to have been any attempt to extend the Equal Credit Opportunity Act to lease transactions at that time.

The Federal Reserve Board, which was charged with administering the Truth in Lending Act, urged Congress to amend the Act to cover lease transactions. [Federal Reserve Board Annual Reports to Congress On the Enforcement of the Truth in Lending Act, 1973 and 1974.] Congress responded in 1976 by passing the Consumer Leasing Act, 15 U.S.C. §§1667-1667e, as an amendment to the Truth in Lending Act. That Act imposed disclosure requirements upon lessors in connection with "consumer leases." A "consumer lease" was defined as a lease of personal property for a period in excess of four months and for a total contractual obligation of less than $25,000. Id. at §1667. The disclosure requirements of the original Truth in Lending Act were also amended to apply to lessors

> in consumer leases. Id. at §1631. The result of these amendments was thus expressly to impose disclosure requirements on limited types of leases, in addition to the disclosures previously required in connection with "credit transactions."
>
> On the same day that Congress passed the Consumer Leasing Act, it amended the Equal Credit Opportunity Act to include discrimination based on race, color, religion, national origin and age. It did not amend the definition of "credit" or otherwise modify the scope of the Act's coverage.
>
> This sequence of legislative events virtually compels the conclusion that Congress viewed "credit" transactions and "lease" transactions as two distinct and mutually exclusive categories. Both the Truth in Lending Act and the Equal Credit Opportunity Act in their original forms covered only "credit" transactions. Congress expanded Truth in Lending by expressly extending its coverage to consumer lease transactions. It made no such change in coverage for the Equal Credit Opportunity Act. That Act consequently does not apply to leases.

724 F.2d at 796-797 (9th Cir. 1984). (emphasis in original) (footnotes omitted).

Congress has long recognized that consumer leases are not credit transactions,

but alternatives to credit transactions. The very first section of the Truth in Lending Act states:

> The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

15 U.S.C. §1601(b) (1982) (emphasis added).

The CLA was enacted in order to regulate the consumer leasing industry and to achieve the congressional objective of full disclosure of lease terms.

Regulation M, 12 C.F.R. Section 213 (1983), was issued by the Board of Governors of the Federal Reserve System to implement

the CLA. Initially, the regulations with respect to the CLA were contained within Regulation Z, the regulation promulgated to implement the Truth in Lending Act. As part of the general revision of Regulation Z, the consumer leasing regulations were issued as a separate regulation which became effective on April 1, 1981. When the Board of Governors of the Federal Reserve System promulgated Regulation M and revised Regulation Z they stated:

> The Board has separated Regulation M from Regulation Z as part of its commitment to ease the regulatory burden and facilitate compliance. The Truth in Lending Act and the Consumer Leasing Act govern two different types of consumer transactions. A lessor may have no interest in extending credit, and a creditor may never lease personal property to consumers. Each regulation will be easier to use if it does not contain provisions that regulate the other.
>
> * * *
>
> To the extent that Regulation M is the same as the leasing provisions in the current Regulation Z, lessors may

> continue to rely on the existing staff letters until they are rescinded or incorporated into a commentary.

46 Fed. Reg. §§20949-20950 (1981) (emphasis added).

Regulation M specifically addresses the distinction between a lease and a credit sale. The following relevant definition appears at 12 C.F.R. Section 213.2(a)(6) (1983):

> "Consumer Lease" means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family or household purposes, for a period of time exceeding four months, for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease which meets the definition of a credit sale in Regulation Z, 12 C.F.R., Part 226.2(a), nor does it include a lease for agricultural, business or commercial purposes, or one made to an organization.

Regulation Z, 12 C.F.R. Section 226.2(a)(16) (1983), states:

> "Credit Sale" means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:
>
> (i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
>
> (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

Reading Regulation M and Regulation Z together, one comes to the inescapable conclusion that the lease Brothers sought cannot be categorized as an extension of credit. Had Brothers entered into the contemplated automobile lease with First Leasing, she could only have become the owner of the subject automobile at the end of the forty-eight month lease upon full payment of approximately $15,400.00, the estimated residual value of the vehicle at

lease end. Thus, there would not have been a credit transaction because Brothers could not have become the owner of the vehicle "for no additional consideration or for nominal consideration . . . ."

Moreover, even if it is assumed that the lease contemplated by the parties would have contained a purchase option, the lessee is not obligated to exercise such an option, and may return the leased vehicle to the lessor at lease end.

In support of the preceding discussion of the relevant Acts are two unofficial interpretations by the Federal Reserve Board Staff of Regulation B, the implementing regulation for the ECOA. The Federal Reserve Board Staff letter dated August 17, 1977, Interpretation No. 7 (Appendix p. 54), reads in relevant part:

> This will respond to your letter of June 15, in which you ask whether Regulation B applies to vehicle lease

> agreements. The following is an unofficial interpretation of the regulation.
>
> Regulation B applies to all aspects of a "credit" transaction. Accordingly, in the staff's opinion, a lease agreement is not subject to Regulation B unless a "credit sale" results from the transaction. A lease becomes a "credit sale" when, under its terms, a customer contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the customer will become, or for no other or for a nominal consideration have the option to become, the owner of the property upon full compliance with the obligations under the lease agreement.

5 Cons. Cred. Guide (CCH) ¶42,090.

The Federal Reserve Board Staff reaffirmed its position that the ECOA has no application to lease transactions as recently as this year. An unofficial interpretation dated February 1, 1984 (Appendix p. 56), reads in relevant part:

You ask whether it would violate the

> Equal Credit Opportunity Act to require a spouse's signature on a rental contract . . . .
>
> The Equal Credit Opportunity Act and Regulation B, which implements it, forbid discrimination in any aspect of a credit transaction on the basis of sex and marital status, as well as other factors.
>
> The first question that you need to decide is whether the transactions that you describe are credit within the meaning of the Act. Section 202.2(j) of Regulation B defines credit as "the right . . . to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor." Generally, a lease agreement would not be credit within the meaning of the Act.

5 Cons. Cred. Guide (CCH) ¶42,114 (emphasis added).

As the Federal Reserve Board Staff states in its most recent interpretation, the threshold question which must be determined before the ECOA can be applied is whether or not the transaction at issue is an extension of credit.

From the foregoing review of the

federal statutory scheme and the interpretations issued by the agency mandated to enforce the scheme, it is evident that leases, such as the one applied for by Brothers, are not extensions of credit. Congress has established a separate regulatory scheme for leases, a scheme to which the ECOA does not apply.

2. Logic And The Canons Of Statutory Construction Compel The Conclusion That Congress Did Not Intend The Equal Credit Opportunity Act To Be Applied To Lease Transactions Covered By The Consumer Leasing Act.

The interpretation of a statute begins with the language itself. Teamsters v. Daniels, 439 U.S. 551 (1979). The expression of one thing ordinarily is the exclusion of another. Thus, where a form of conduct, the manner of its performance and the persons and things to which it refers are

specifically designated, the proper inference to be drawn is that all omissions are intended to be exclusions. In re Chicago, M., St. P. & Pac. R. Co., 658 F.2d 1149 (7th Cir. 1981) cert. denied, 455 U.S. 1000 (1982); 2A C. Sands, Sutherland on Statutory Construction, §47.23 (4th ed. 1973). Where the statute contains a definition of a term to be used in that statute or other acts, there can be no question of the binding effect of the legislatively enacted declaration of the term's meaning. Colautti v. Franklin, 439 U.S. 379 (1978); 2A C. Sands, Sutherland on Statutory Construction, §47.07 (4th ed. 1973).

The majority of the Court of Appeals abandoned all of the tenets of statutory construction, as cited above, to reach their holding that the ECOA applies to consumer leases.

On March 23, 1976, the Congress

amended the ECOA to include additional categories of prohibited discrimination and, on that same day, passed the CLA. In 15 U.S.C. Section 1667d(b) of the CLA (Appendix p. 70), Congress specifically provided that when lessors failed to comply with certain requirements of the CLA, lessors would be subject to the same penalties as those imposed on creditors who violated certain portions of the Truth in Lending Act. To subject the lessors to penalty provisions otherwise applicable only to creditors, Section 1667d(b) states: "For the purposes of this section, the term 'creditor' as used in sections 1640 and 1641 shall include a lessor as defined in this chapter." The legislative history of this section states that it "incorporates the civil penalty provisions of the existing Truth in Lending Act, and makes clear that the term 'creditor' in those provisions

includes lessors under this Act [the CLA]." [1976] U.S. Code Congressional and Administrative News 438.

If Congress had intended the ECOA to apply to lease transactions and to lessors, it would have provided in the CLA that for purposes of the ECOA the term "lessor" would be included in the term "creditor," or it would have further amended the ECOA, the very day that the CLA was enacted, to state that the Act applied to creditors and lessors.

Congress did not intend to, and did not, include the term "lessor" within the meaning of "creditor" as defined in the ECOA, 15 U.S.C. Section 1691a(e) (Appendix p. 71). The Congressional silence with respect to leases in the ECOA can only be understood to mean that Congress did not intend consumer leases to be transactions subject to the ECOA.

While the Court of Appeals' goal to eradicate discrimination is laudable, its failure to accept the limits placed by Congress on the ECOA is insupportable.

A cardinal rule of statutory construction is to save and not to destroy the statute by, where possible, giving effect to every word, clause and sentence of a statute. U.S. v. Menasche, 348 U.S. 528 (1955). Yet the majority opinion of the Court of Appeals reaches so far to bring the CLA within the ambit of the ECOA, that it negates virtually all reasons for passage of the CLA and makes most provisions of the CLA redundant.

If, as the Court of Appeals held, "[O]n the one hand, the lease obligation that Brothers would have incurred under the automobile lease falls within the ECOA's definition of 'credit' . . . ." (724 F.2d at p. 792), then there was little

need for passage of the CLA, since the Truth in Lending Act disclosure requirements and the ECOA ban on discrimination both come into play whenever there is a consumer credit transaction. Put another way, if leases are in fact "extensions of credit" or "credit transactions," then the requirements of the Truth in Lending Act have always applied to consumer leases. If this is the case, then, as Judge Canby points out in his dissent, it is difficult to explain why the Federal Reserve Board, prior to the passage of the CLA, recommended in its annual reports to Congress that a consumer lease disclosure act must be passed in order to regulate transactions which were not then being regulated.

First Leasing submits that Congress has recognized and legislated consistently and repeatedly in support of the distinction between credit transactions and lease

transactions.

3. The Court Of Appeals Failed To Adhere To The Degree Of Deference To Be Shown To The Views Of Administrative Agencies As Dictated By This Court In Ford Motor Credit Co. v. Milhollin.

Recently the Supreme Court held in Ford Motor Credit Company v. Milhollin, 444 U.S. 555, at 567 (1980), that "unless demonstrably irrational, Federal Reserve Board staff opinions construing the Act or Regulation should be dispositive . . . ."

The decision in Milhollin was intended to create stability and uniformity in the interpretation of a complicated consumer protection scheme by precluding judicial interpretation of the underlying statute where a regulatory agency empowered by Congress to interpret the statute has in fact interpreted it. The holding in Milhollin was that unless and only unless

such a regulatory interpretation is demonstrably irrational may a court ignore it. While Milhollin dealt with the Truth in Lending Act, the judicial principles enunciated there are equally applicable to the ECOA, inasmuch as the policy considerations are the same and the Federal Reserve Board's role with regard to the ECOA, as mandated by Congress, is identical to its role with respect to the Truth in Lending Act. Both official and unofficial staff interpretations of the Truth in Lending Act were in issue in Milhollin and while the Supreme Court noted the special status accorded to both formal Federal Reserve Board interpretations and formal interpretations issued by its staff (e.g., absolute relief from liability if a creditor relies thereon, 15 U.S.C. Section 1640(f)), no apparent distinction between official and unofficial Federal Reserve Board staff

interpretations was made by the Supreme Court with regard to the standard of deference to be afforded such interpretations.

Nevertheless, the Court of Appeals majority dismisses the view of the Federal Reserve Board Staff, as set forth in the Interpretation dated August 17, 1977 (Appendix p. 54), in footnote 15 of its opinion, 724 F.2d at 795.

The recent reiteration of the Federal Reserve Board Staff's view that the ECOA does not apply to leases, as set forth in its Interpretation dated February 1, 1984 (Appendix p. 56), was not brought to the attention of the Court of Appeals because it was published subsequent to that decision.

The Court of Appeals held below that before any Federal Reserve Board Staff Interpretation on the leasing versus credit distinction is to be given persuasive authority, it must:

(a) Set forth reasoning in support of its position;

(b) Be based on prior agency decision; and

(c) Demonstrate that, in formulating its conclusion, all aspects and interrelationships of the ECOA and CLA were fully considered, 724 F.2d footnote 15 at 795. Such requirements are onerous and go well beyond the guidelines set forth in Milhollin.

The Court of Appeals buttresses its dismissal of the staff interpretation by noting that unofficial staff interpretations do not (apparently) insulate one relying on them from liability. Though that may be the case, such an argument is in no way relevant to the issue here and in no way undercuts the reasoning behind the Milhollin holding.

Therefore, First Leasing submits that

the Court of Appeals' reliance on the authorities cited in footnote 15 of its opinion without addressing the Milhollin decision, was error. Moreover, since the views that the Federal Reserve Board Staff enunciated in two interpretations are not demonstrably irrational, the Court of Appeals was bound to accept those interpretations of the ECOA.

As the Milhollin court stated, "[f]inally, wholly apart from jurisprudential considerations or congressional intent, deference to the Federal Reserve is compelled by necessity; a court that tries to chart a true course to the Act's purpose embarks upon a voyage without a compass when it disregards the agency's views. [444 U.S. at 568.]

4. Even If The Court Of Appeals Was Correct In Its Holding That The Equal Credit Opportunity Act Applies To A "Consumer Lease," As That Term Is Defined By The Consumer Leasing Act, The Court Erred In Calculating "Total Lease Obligation" As Set Forth In Regulation M Issued By The Federal Reserve Board, And In Its Conclusion That The Proposed Transaction With Brothers Was A Consumer Lease.

As the majority correctly points out in footnote 7 of its decision, 724 F.2d at 792, the CLA defines a consumer lease as a contract in the form of a lease for the use of personal property for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, where the use is primarily for personal, family or household purposes. 15 U.S.C. §1667(1), Appendix p. 69.

However, the Court of Appeals erroneously concludes that Brothers' proposed obligation was for less than $25,000, setting forth in footnote 8, 724 F.2d at 792, that she

would have been obligated to make forty-eight monthly payments of $339.17, for a total of $16,280.16.

Here, where a Federal Reserve Board regulation is at issue, there can be no doubt that the Court of Appeals is mandated by the Supreme Court, as set forth in Milhollin, supra, to accept the regulations which have been promulgated by the Federal Reserve Board to implement the CLA.

In the definition section of Regulation M, "total lease obligation" is defined as follows:

> "Total Lease Obligation" equals the total of (1) the scheduled periodic payments under the lease, (2) any non-refundable cash payment required of the lessee or agreed upon by the Lessor and Lessee or trade-in allowance made at consummation, and (3) the estimated value of the leased property at the end of the lease term.

12 C.F.R. 213.2(a)(17) (1983).

Although the CLA speaks in terms of "total contractual obligation not exceeding

$25,000," and the definition of consumer lease in Regulation M follows the statutory language, "total lease obligation" as used in Regulation M is synonymous with the term "total contract obligation," and it is only when such an obligation is less than $25,000 and the other requirements of the CLA are met that the lease transaction is considered to be a consumer lease, subject to all of the provisions of the CLA and Regulation M. Therefore, a number of transactions are excluded from the CLA's requirements and from the disclosures required by Regulation M, and among those transactions are leases in which the total lease obligation exceeds the sum of $25,000. 8 K. Lapine & B. Bash, Banking Law, §163.03[1] and §163.03[7]. See also, Board of Governors of the Federal Reserve System Official Staff Interpretation, FC-0082, 42 Fed. Reg. 31431 (1977), Appendix

p. 59. In calculating the total contractual liability of Brothers under the CLA and Regulation M, the Court of Appeals was required to include the total of all monthly payments under the proposed lease ($16,280.16) and the estimated value of the vehicle at lease end ($15,400.00) for a total of $31,680.16.

Had a lease been made by First Leasing to Brothers, she would have been obligated under the contract to make lease payments approximating $16,280 during the forty-eight month term of the lease, and the residual value of the vehicle at lease end would have been approximately $15,400. Thus, for the purpose of determining whether the transaction is a consumer lease, as required by Regulation M, the total lease obligation of Brothers would have exceeded $31,000. In Brothers' proposed lease, then, the

amount calculated exceeds $25,000.* So, even if the lease had been for personal use, it would not have been a consumer lease. Similarly, if the total lease obligation had been less than $25,000, but the intended use of the vehicle had been for commercial, business or agricultural purposes, Brothers' lease would not have been a consumer lease. Excluding transactions where the contract obligation is in excess of $25,000 follows the standards established by Congress in the Truth in Lending

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*Counsel for Brothers fully recognized the amount of the total lease obligation his client would incur and argued before the trial court that Brothers would have been obligated for total monthly lease payments of $15,848.16 as well as the residual value of $15,400.00. At page 3 of Brothers' Memorandum of Points and Authorities in Opposition to Motion to Dismiss, Brothers' counsel argues: "Plaintiff would have paid a sum of $31,248.16 over a 48 month period of time for use of an automobile whose admitted purchase price is the sum of $27,000 . . . ."

Act where transactions in excess of $25,000 are not considered consumer transactions.

In view of the foregoing, it is submitted that the Court of Appeals erred when it concluded that the proposed lease transaction between Brothers and First Leasing was a consumer lease. It is clear under the CLA and Regulation M, and recognized by all parties, that Brothers' total lease obligation under the proposed open-end lease would have exceeded $31,000. Thus, following the guidelines set forth in Milhollin, the Court of Appeals was required to use the method for determining whether the transaction is a "consumer lease" as set forth in Regulation M and, on the admitted facts, it follows that the CLA does not apply to the proposed lease transaction between Brothers and First Leasing.

CONCLUSION

The effects of the Court of Appeals' judgment will have sweeping and profoundly deleterious effects on the leasing industry throughout the United States. This Petition for Writ of Certiorari should be granted so that the Supreme Court may clarify its holding in Milhollin and prevent needless litigation which will follow the Court of Appeals' obliteration of the distinction between "lease transactions" and "credit transactions."

Dated: June 15, 1984

Respectfully submitted,

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FIRST LEASING CORPORATION

APPENDIX

724 F.2d 789 (1984)

Patricia Ann BROTHERS,
Plaintiff-Appellant,

v.

FIRST LEASING, and Does 1 through 20, inclusive, Defendants-Appellees.

No. 82-4584.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted June 13, 1983.

Decided Jan. 24, 1984.

[790] Before ALARCON, CANBY, and REINHARDT, Circuit Judges.

REINHARDT, Circuit Judge:

The district court dismissed plaintiff's claim that her application for an automobile lease had been denied on the basis of sex or marital status in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691-1691f (1982). The sole issue on appeal is whether the ECOA applies to

consumer leases. We hold that it does.

In January 1982, plaintiff-appellant, Patricia Ann Brothers, attempted to lease an automobile for her personal use from defendant-appellee, First Leasing.<1> First Leasing required Brothers to submit a completed "Application for Lease Credit," which was to provide First Leasing with information with which to evaluate her financial condition.

Brothers informed First Leasing that she intended to lease the automobile in her own name rather than jointly with her

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<1> In reviewing the district court's dismissal for failure to state a claim upon which relief can be granted, we must accept all material allegations in Brothers' complaint as true and construe them in the light most favorable to her. See Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 1848, 23 L.Ed.2d 404 (1969) (plurality opinion); Benson v. Arizona State Bd. of Dental Examiners, 673 F.2d 272, 275 & n.7 (9th Cir. 1982); Lodge 1380, Bhd. of Ry., Airline & Steamship Clerks v. Dennis, 625 F.2d 819, 825 (9th Cir. 1980).

husband, James A. Garske.<2> Nonetheless, First Leasing insisted that Brothers include on the [791] "Application for Lease Credit" information concerning Mr. Garske's financial history. In addition, First Leasing required Mr. Garske, as well as Brothers, to sign the application. Brothers submitted the application, signed by her husband, with the requested information about his finances. First Leasing then obtained TRW Credit Reports on Brothers and her husband. Mr. Garske's credit report indicated that he previously had filed for bankruptcy.

In a form entitled "Statement of Credit Denial, Termination, or Change,"

<2> Brothers sought to lease a 1982 Mercedes Benz 300 Diesel Turbo automobile for 48 months. Besides the four year obligation, Brothers might have been obligated under the lease to pay First Leasing more money at the end of the lease, depending on the resale value of the automobile at that time.

which complies with the requirements of the ECOA, see 15 U.S.C. §1691(d)(1982), and is almost identical to the form suggested in the ECOA regulations, see 12 C.F.R. §202.9(b)(2)(1983), First Leasing rejected Brothers' application. The "principal reason" given for the denial of Brothers' lease credit application was her husband's previous bankruptcy. The form used by First Leasing also contained a statement that the ECOA bars "creditors from discriminating against credit applicants on the basis of sex [or] marital status."

Brothers filed a claim against First Leasing that alleged that (1) the requirement that Mr. Garske sign her lease credit application, and (2) the denial of her application because of his credit record, constitute unlawful discrimination on the basis of sex or marital status under the ECOA, 15 U.S.C. §1691(a)(1). Contending

that the ECOA does not apply to leases, First Leasing moved under Fed.R.Civ.P. 12(b)(6) to dismiss the action for failure to state a claim upon which relief can be granted. The district court held that the lease was not covered by the ECOA and granted the motion. We reverse.<3>

I

The Equal Credit Opportunity Act (ECOA) is Title VII of the Consumer Credit Protection Act, 15 U.S.C. §§1601-1693r (1982). As amended, the Consumer Credit Protection Act is a comprehensive statute designed to protect consumers by requiring full disclosure

<3> It is necessary on this appeal to hold only that the ECOA applies to consumer leases. We note, however, that we have previously held that requiring a spouse's signature on credit instruments is unlawful discrimination on the basis of marital status under the ECOA. Anderson v. United Finance Co. 666 F.2d 1274, 1276-77 (9th Cir. 1982).

of financial terms in most credit transactions, making unlawful the use of certain unethical practices in the garnishment of wages and debt collection, regulating the transfer of funds by electronic means, and prohibiting discrimination in credit transactions. As originally passed in 1974, Title VII, the ECOA, prohibited discrimination by any creditor "against any applicant, with respect to any aspect of a credit transaction . . . on the basis of . . . sex or marital status." 15 U.S.C. §1691(a)(1). Congress later amended the ECOA to add prohibitions against discrimination on the basis of race, color, religion, national origin, and age. Pub.L. No. 94-239, 90 Stat. 251 (1976). The ECOA, on its face, applies to all "credit transactions."

The Consumer Credit Protection Act requires disclosure in various types of financial transactions. Title I, the Truth

in Lending Act (TILA), 15 U.S.C. §§1601-1666j (1982),<4> enacted in 1968, requires full disclosure of credit terms by a creditor prior to entering into consumer loans or "credit sales" of property or services. The Consumer Leasing Act (CLA), 15 U.S.C. §§1667-1667e (1982), subsequently enacted <5> as a

<4> The other Titles of the Consumer Credit Protection Act as amended are: Title II-Extortionate Credit Transactions, Title III-Restriction on Garnishment, Title IV-National Commission on Consumer Finance, Title V-General Provisions, Title VI-Fair Credit Reporting Act, Title VIII-Fair Debt Collection Practices Act, and Title IX-Electronic Fund Transfers.

<5> The Federal Reserve Board, contending that the TILA did not apply to leases, urged Congress to enact the CLA. See, e.g., Board of Governors of the Federal Reserve System, Annual Report 244-45 (1974). The Board's position finds more support in the legislative history than in the language of the statute. Even though a statute's legislative history often is more vague than the statute that the court is interpreting, see United States v. Public Utilities Comm'n, 345 U.S. 295, 320, 73 S.Ct. 706, 720, 97 L.Ed. 1020 (1953) (Jackson, J., concurring); United Steelworkers v. Weber, 443 U.S. 193, 229-30, 99 S.Ct.

subchapter of the Truth in Lend- [792]
ing Act,<6> requires lessors to meet
similar disclosure requirements prior to
entering into consumer leases.<7>

2721, 2740-41, 61 L.Ed.2d 480 (1979) (Rehnquist, J., dissenting), the legislative history here strongly suggests that the TILA as enacted in 1968 was not designed to apply to leases. See Landers, The Scope and Coverage of the Truth in Lending Act, 1976 Am.B.Found.Research J. 565, 629-39.

<6> Although the CLA is a part of the TILA, when we refer to the TILA in this opinion we refer only to the non-CLA part of the Act. We do so in order to avoid the confusion that might otherwise arise when we analyze separately the applicability of the ECOA to the principal part of the TILA and to the CLA part.

<7> The CLA defines a consumer lease as

> a contract in the form of a lease or bailment for the use of personal property . . . for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. . . .

15 U.S.C. §1667(1). Because it involved an obligation for a period exceeding four

Both the enactment of the requirement for financial disclosure in consumer lease transactions and the amendment of the ECOA to include discrimination based on characteristics other than sex and marital status occurred in 1976. Although both bills were considered by the same committees in the House and Senate and were adopted on the same day, Congress did not include any specific reference to leases in the amendments to the ECOA. First Leasing contends that this failure indicates a Congressional intent not to include leases within the reach of the ECOA.

The issue, then, is whether the ECOA applies only to the Truth in Lending Act or to the Consumer Leasing Act as well. We are aware of no other case in which a court

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months, of less than $25,000, and was for personal or family purposes, the lease that Brothers applied for was a consumer lease under the CLA.

has addressed this question.

II

"In construing a statute in a case of first impression, the courts look to the traditional signposts for statutory interpretation: first, the language of the statute itself; and second, its legislative history and the interpretation given it by its administering agency . . . ." Turner v. Prod, 707 F.2d 1109, 1114 (9th Cir. 1983). "[T]he legislative and administrative histories are usually pursued in an effort to ascertain something more important, the purpose of Congress in enacting a specific piece of legislation. If a court can ascertain that purpose, it is usually dispositive of an issue of statutory construction." Id. at 1121 (citations omitted); see id. at 1114-21; See, e.g., Rose v. Lundy, 455 U.S.

509, 517-18, 102 S.Ct. 1198, 1202-03, 71 L.Ed.2d 379 (1982); Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608, 99 S.Ct. 1905, 1911, 60 L.Ed.2d 508 (1979); United States v. Sisson, 399 U.S. 267, 297-98, 90 S.Ct. 2117, 2133-34, 26 L.Ed.2d 608 (1970); United States v. Bacto-Unidisk, 394 U.S. 784, 799, 89 S.Ct. 1410, 1418, 22 L.Ed.2d 726 (1969); Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 64, 73 S.Ct. 580, 583, 97 L.Ed. 821 (1953).

The use of the broad term "credit transactions" in the ECOA does not, by itself, answer the question whether consumer leases are covered by the Act, although a literal reading of the language supports the view that they are. See United States v. Little Lake Misere Land Co., 412 U.S. 580, 593, 93 S.Ct. 2389, 2397, 37 L.Ed.2d 187 (1973) (recognizing "the inevitable

incompleteness presented by all legislation"); G. Gilmore, The Ages of American Law 96-97 (1977) ("Statutory language-like any other kind of language-almost always presents alternative possibilities of construction."). On the one hand, the lease obligation that Brothers would have incurred under the automobile lease falls within the ECOA's definition of "credit."<8> So would the obli-[793] gations incurred under most consumer leases. Moreover, the credit investigation engaged in by First Leasing is specifically included within the Federal Reserve Board's definition of "credit

<8> The ECOA defines credit as "the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. §1691a(d) (1982). Under the terms of the lease that Brothers applied for, she would have been obligated to pay a total amount of $16,280.16. Payment of that debt would have been deferred, and Brothers would have been required to make 48 monthly installment payments of $339.17.

transaction."<9> On the other hand, it appears that the Consumer Credit Protection Act did not require disclosure in lease transactions until the enactment of the CLA in 1976, see note 5 supra, even though the term "credit transactions" appeared prior to that time in some parts of the Truth in Lending Act. On this basis, a strong argument can be made that (1) the use of the term "credit transactions" is not conclusive with respect to the issue before us, and (2) the ECOA, did not, at least

<9> The Federal Reserve Board, given the power to promulgate regulations to enforce the ECOA, see 15 U.S.C. §1691b(a), has defined a "credit transaction" as "every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures." 12 C.F.R. §202.2(m) (1983).

initially, apply to consumer leases.

We think it unclear whether the ECOA applied to consumer leases between 1974, when it was first enacted, and 1976, when the CLA was adopted. However, we need not resolve that academic question since we conclude that whether or not the ECOA applied prior to the enactment of the CLA, it applies now.

Although "credit transactions" might in some contexts lend itself to a narrow interpretation, we cannot give it such a construction in the ECOA in view of the overriding national policy against discrimination that underlies the Act and in view of the current structure of the Consumer Credit Protection Act, the umbrella statute. We must construe the literal language of the ECOA in light of the clear, strong purpose evidenced by the Act and adopt an interpretation that will serve to

effectuate that purpose. See Addision v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 617, 64 S.Ct. 1215, 1221, 88 L.Ed. 1488 (1944) ("If legislative policy is couched in vague language, easily susceptible of one meaning as well as another . . . we should not stifle a policy by a pedantic or grudging process of construction."); Fong v. Immigration and Naturalization Service, 308 F.2d 191, 195 (9th Cir. 1962) (quoting Addision v. Holly Hill Fruit Products). In fact, "[i]t is a well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute." Bob Jones University v. United States, _____ U.S. _____, 103 S.Ct. 2017, 2025, 76 L.Ed.2d 157 (1983); see United Steelworkers v. Weber, 443 U.S. 193, 201 99 S.Ct. 2721, 2726, 61 L.Ed.2d 480 (1979) (quoting Holy

Trinity Church v. United States, 143 U.S. 457, 459, 12 S.Ct. 511, 512, 36 L.Ed. 226 (1892).

Preliminarily, we note that there is nothing in the literal language or the legislative history of the CLA, or of the ECOA, including the 1976 amendments, that suggests that the ECOA does not apply to the CLA.<10> We also note that interpreting other titles of the Credit Consumer Protection Act, we have found an examination of the purpose of the particular title to be crucial to our decision. See Donovan v. Southern California Gas Co., 715 F.2d 1405,

<10> The legislative history contains no discussion of the applicability or non-applicability of the ECOA to consumer leases. See, e.g., S. Rep. No. 589, 94th Cong., 2d Sess. (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 403, S.Rep. No. 902, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Ad. News 6119; S. Rep. No. 590, 94th Cong., 2d Sess (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 431.

1408 (9th Cir. 1983) (per curiam); Hutchings v. Beneficial Finance Co., 646 F.2d 389, 392 (9th Cir. 1981); Eby v. Reb Realty, Inc., 495 F.2d 646, 650 (9th Cir. 1974).

"The purpose of the ECOA is to eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to con- [794] sider for individual credit." Anderson v. United Finance Co., 666 F.2d 1274, 1277 (9th Cir. 1982) (citing Markham v. Colonial Mortgage Service Co., 605 F.2d 566, 569 (D.C. Cir. 1979)); see Pub.L. No. 93-495 §502, 88 Stat. 1500, 1521 (1974); Miller v. American Express Co., 688 F.2d 1235, 1239 (9th Cir. 1982). See generally National Commission on Consumer Finance, Consumer Credit in the United States (1972) (noting that many groups, particularly women, historically have been discriminated

against in the extension of credit).<11> Congress reaffirmed the goal of antidiscrimination in credit in the 1976 amendments to the ECOA by adding race, color, religion, national origin, and age to sex and marital status as characteristics that may not be considered in deciding whether to extend credit. See Pub.L. No. 94-239, 90 Stat. 251 (1976); S.Rep. No. 589, 94th Cong., 2d Sess. 1, 4, 13 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 403, 406, 415.

In enacting and amending the ECOA,

<11> Congress also recognized that [e]conomic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote.
Pub.L. No. 93-495 §502, 88 Stat. 1500, 1521 (1974).

Congress recognized that a prohibition against discrimination in credit provides a much-needed addition to the previously existing strict prohibitions against discrimination in employment, housing, voting, education, and numerous other areas. The ECOA is simply one more tool to be used in our vigorous national effort to eradicate invidious discrimination "root and branch" from our society. See Green v. County School Board, 391 U.S. 430, 438, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968); Fullilove v. Klutznick, 448 U.S. 448, 472-92, 100 S.Ct. 2758, 2771-2781, 65 L.Ed.2d 902 (1980) (plurality opinion); United Steelworkers v. Weber, 443 U.S. 193, 200-08, 99 S.Ct. 2721, 2725-2730, 61 L.Ed.2d 480 (1979).

In view of the strong national commitment to the eradication of discrimination in our society, we see no reason why Congress

would have wanted to subject the leasing of durable consumer goods to regulation under the disclosure provisions of the Consumer Credit Protection Act, but to exclude those transactions from the scope of the antidiscrimination provisions of the Act. Certainly, abolishing discrimination in the affording of credit is at least as important as compelling the disclosure of information regarding finance charges. To conclude that discrimination in consumer leasing transactions is exempt from the ECOA simply because Congress did not add express language covering consumer leases when it amended the ECOA for entirely unrelated reasons would be inconsistent with the broad purpose of the statute and the liberal construction we must give it. It is far more reasonable to conclude that Congress thought that an express amendment was unnecessary because the ECOA on its

face applies to all credit transactions and, therefore, the language already in the Act was broad enough to cover consumer leases.

In enacting the Consumer Leasing Act, Congress explicitly recognized the "recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales." See 15 U.S.C. §1601(b). Prospective lessors run extensive credit checks on consumer lease applicants just as they do in the case of credit sales applicants. The problems of persons discriminated against with respect to credit under the Truth in Lending Act and the CLA are for the most part identical. Therefore, interpreting "credit transactions" so that the ECOA applies to lease transactions, as well as to credit sales and loans, is essential to the accomplishment of the

Act's antidiscriminatory goal.

We turn now to an analysis of the statutory scheme. The CLA is a part of a comprehensive act regulating numerous financial transactions. The ECOA is a later part of that same comprehensive statute. We must view the umbrella act, the Con- [795] sumer Credit Protection Act, as a whole and not as separate unrelated parts.<12> We must also treat the amendments

<12> See United States v. Heirs of Boisdore, 49 U.S. (8 How.) 113, 121, 12 L.Ed. 1009 (1849) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."); see, e.g., Pennhurst State School & Hospital v. Halderman, 451 U.S. 1, 18-19, 101 S.Ct. 1531, 1540-1541, 67 L.Ed.2d 694 (1981); Adams v. Howerton, 673 F.2d 1036, 1040-41 (9th Cir.), cert. denied, 458 U.S. 1111, 102 S.Ct. 3494, 73 L.Ed.2d 1373 (1982); Pacific Legal Foundation v. State Energy Resources Conservation & Development Commission, 659 F.2d 903, 926 (9th Cir. 1981), aff'd sub nom., Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, ____ U.S. ____, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983).

to the statute as if they were adopted as part of the original enactment.<13> When the ECOA is examined in that light, it becomes evident that it applies to all transactions covered by Title I of the Consumer Credit Protection Act. The statutory scheme is wholly inconsistent with the view that the ECOA applies to one part of Title I, the Truth in Lending Act, but not to another, the CLA. Moreover, any doubt as to this point is removed when we consider the fact that the CLA was enacted and codified as a subchapter of the Truth in Lending Act, and not as a separate measure. See note 6 supra.

Finally, to interpret the term

<13> See Blair v. City of Chicago, 201 U.S. 400, 475, 26 S.Ct. 427, 446, 50 L.Ed. 801 (1906); Bailey v. Tarr, 469 F.2d 409, 412 (9th Cir. 1972) (quoting Blair v. City of Chicago); 1A J. Sutherland, Statutes and Statutory Construction §§22.34-22.35, at 196-200 (C. Sands 4th ed. 1972).

"credit transactions" narrowly, so as to exclude consumer leases, would nullify Congress' use of flexible language necessary "to insure the effective application of legislative policy to changing circumstances." 1A J. Sutherland, note 13 supra §21.16, at 95. While the all-inclusive language of the ECOA may be read as suggesting that Congress intended the scope of its antidiscriminatory provisions to be even broader than the scope of the Truth in Lending Act and the CLA,<14> we need not

<14> The language of the ECOA is much broader than that of the TILA: "A transaction, to come within the terms of [the TILA], usually must involve a finance charge or installment payments, must involve an individual, must have a consumer purpose, and the amount involved cannot exceed a limited figure. At least initially, the ECOA imposes no such limits." Maltz & Miller, The Equal Credit Opportunity Act and Regulation B, 31 Okla.L.Rev. 1, 2-3 (1978) (footnotes omitted). Similarly, the language of the ECOA is broader than that of the CLA. The CLA applies only to consumer leases that would extend for a

consider that question here. We hold only that Congress intended to make the ECOA's antidiscrimination provisions applicable to all transactions covered by the Consumer Credit Protection Act, whether those transactions were covered under the initial form of the Act or as a result of the subsequent amendments.<15> [796]

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period of over four months and involving an obligation not exceeding $25,000. 15 U.S.C. §1667(1). The language of the ECOA, on its face, imposes no such limitations on "credit transactions."

<15> Despite the use of the all-inclusive term "credit transaction" in the ECOA, a staff member of the Federal Reserve Board, in an unofficial staff interpretation, took the position that a lease is subject to that Act "only if it meets the criteria for a 'credit sale.'" Federal Reserve Board Staff Interpretations, No. 7 (August 17, 1977), reprinted in R. Clontz, Equal Credit Opportunity Manual Appendix E-34 (3d ed. 1983). Although a regulation issued by the Board is entitled to substantial deference, see, e.g., Western Pioneer, Inc. v. United States, 709 F.2d 1331, 1335 (9th Cir. 1983), an unofficial interpretation by a staff member of the Federal Reserve Board is "hardly binding on a court," Eby v. Reb

Because the language of the ECOA is broad and its antidiscriminatory purpose

Realty, Inc., 495 F.2d 646, 650 (9th Cir. 1974); see Thomas v. Myers-Dickson Furniture Co., 479 F.2d 740, 747 (5th Cir. 1973); Davis v. Colonial Securities Corp., 541 F.Supp. 302, 305 (E.D.Pa. 1982). Although a court may find an unofficial staff interpretation to be persuasive, Eby, 495 F.2d at 650; see Skidmore v. Swift & Co., 323 U.S. 13, 140, 65 S.Ct. 161, 164, 89 L.Ed. 124 (1944) (listing factors that give an interpretation persuasive power, quoted in Eby, 495 F.2d at 650 & n. 6), the interpretaion before us does not set forth any reasoning in support of its position and is not based on any prior agency decision. Rather, the "interpretation" only states a conclusion. Moreover, it does not appear to have considered in any way the broad language of the ECOA, the effect of the passage of the CLA on the ECOA, or the compelling antidiscriminatory purpose behind the ECOA. Because of these inadequacies, we do not find the unofficial staff interpretation persuasive.

On remand, First Leasing may attempt to assert an affirmative defense to Brothers' claim under 15 U.S.C. §1691e(e) by alleging that it relied upon the unofficial staff interpretation. The words of §1691e(e), however, suggest that the defense is available only when a party relies upon an official agency interpretation. Moreover, the Federal Reserve Board's regulations state that "[u]nofficial staff interpretations

is overriding, and because the Consumer Leasing Act and the ECOA are part of a comprehensive umbrella statute designed to protect the interest of consumers, we conclude that the ECOA applies to consumer leases.<16>

The district court's order dismissing appellant's claim is reversed and the case is remanded for further proceedings consistent with this opinion.

CANBY, Circuit Judge, dissenting:

With all respect to the majority opinion

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will be issued at the staff's discretion where the protection of [15 U.S.C. §1691e(e)] is neither requested nor required, or where a rapid response is necessary." 12 C.F.R. §202.1(d)(1) (1983); see Landers, note 5 supra, at 567. Thus, ordinarily, reliance on an unofficial staff interpretation would be unreasonable and could not be the basis for an affirmative defense under 15 U.S.C. §1691e(e).

<16> Given our holding, we need not decide whether the lease transaction also constituted a "credit sale" under 15 U.S.C. §1602(g).

and to the laudable goal that it embraces, I must dissent. As I view the statutory structure, Congress has legislated less expansively than the majority holds. To illuminate my point, it is necessary briefly to review the sequence of enactment of some of the components of what is now the umbrella Consumer Credit Protection Act, 15 U.S.C. §§1601-1693r (1982).

In 1968, Congress passed the Truth in Lending Act, 15 U.S.C. §§1601-1666j. That Act imposed extensive requirements of disclosure to be made by creditors in connection with "consumer credit transactions." Id. at §1631. "Credit" as used in that phrase was defined as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." Id. at §1602. It was clear from the legislative history that Congress did not intend this definition to apply to lease

transactions, see majority opinion n. 5, and the Truth in Lending Act was not so applied.

In 1974, Congress enacted the Equal Credit Opportunity Act, 15 U.S.C. §§1691-1691f (1982). That Act forbade discrimination on the basis of sex or marital status with respect to any aspect of a "credit transaction. "Credit" was defined as "the right granted by a creditor to debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." Except for the addition of language to cover credit sales,<1> this is the same definition that was contained in the Truth in Lending Act. Not surprisngly, there does not appear to have been any attempt to extend the Equal

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<1> Appellant in her brief states that she is not suggesting that the lease transaction in issue was a credit sale. Appellant's brief, p. 9.

Credit Opportunity Act to lease transactions at that time.

The Federal Reserve Board, which was charged with administering the Truth in Lending Act, urged Congress to amend the Act to cover lease transactions. Congress responded in 1976 by passing the Consumer Leasing Act, 15 U.S.C. §§1667-1667e, as an amendment to the Truth in Lending Act. That Act imposed disclosure requirements upon lessors in connection with "consumer leases." A "consumer lease" was defined as a lease of personal property for a period in excess of four months and for a total contractual obligation of less than $25,000. Id. at §1667. The disclosure requirements of the original Truth in Lending Act were also amended to apply to lessors in consumer leases. Id. at §1631. The result of these amendments was thus expressly to impose disclosure requirements on limited types of

leases, in addition to the dislosures previ- [797] ously required in connection with "credit transactions."

On the same day that Congress passed the Consumer Leasing Act, it amended the Equal Credit Opportunity Act to include discrimination based on race, color, religion, national origin and age. It did not amend the definition of "credit" or otherwise modify the scope of the Act's coverage.

This sequence of legislative events virtually compels the conclusion that Congress viewed "credit" transactions and "lease" transactions as two distinct and mutually exclusive categories. Both the Truth in Lending Act and the Equal Credit Opportunity Act in their original forms covered only "credit" transactions. Congress expanded Truth in Lending by expressly extending its coverage to consumer

lease transactions. It made no such change in coverage for the Equal Credit Opportunity Act. That Act consequently does not apply to leases.

The majority concludes nevertheless that "credit transactions" in the Equal Credit Opportunity Act includes leases, even though "credit transactions" in the Truth in Lending Act does not. Or, if that is not the majority's position, it is that, while "credit transactions" in the Equal Credit Opportunity Act may not originally have included leases, it did so after passage of the Consumer Leasing Act in 1976. But there is nothing in the Consumer Leasing Act to suggest that Congress was making such a change. Indeed, the whole purpose of passing the Consumer Leasing Act was to add lease transactions to the coverage of the Truth in Lending Act because they were not included in that

Act's original "credit transactions" coverage.

The majority justifies its expansive interpretation of "credit transactions" in the Equal Credit Opportunity Act by emphasizing the importance of the national goal of non-discrimination. There is much appeal to this invocation. Discrimination in financial transactions on the basis of sex or marital status, like that based on race, national origin or religion, is unquestionably odious. Moreover, the facts alleged in this case seem to fall within the spirit of the Equal Credit Opportunity Act. But this line of reasoning amounts in the end to a declaration that Congress should have included leases within the coverage of the Equal Credit Opportunity Act, or that Congress would have done so if it had directed its attention to the problem. The deficiency, however, ought to

be left to Congress to correct, because the majority's solution to the problem will expand the coverage of the Act well beyond anything Congress has thus far intended.

The majority holds that the lease in this case is a "credit transaction" because it is a payment of a "deferred debt" within the meaning of §1691a(d). Majority opinion n. 8, supra. Its rationale is that the lease would have involved a total obligation to pay over $16,000 and this obligation is deferred to be paid monthly over four years. This contention is not inherently illogical, but it proves too much. It means that every lease is a credit transaction within the meaning of the Equal Credit Opportunity Act.<2> The majority's actual

<2> Indeed, the majority's reasoning might well find a "deferred debt" in any executory contract calling for the eventual payment of money, thus making those contracts "credit transactions" subject to the Equal Credit Opportunity Act.

holding is that the Equal Credit Opportunity Act applies to consumer lease transactions. Yet there is nothing in the majority's rationale that confines the coverage of that Act to consumer lease transactions as defined in the Consumer Leasing Act. If a lease is a "credit transaction," then every lease, whether of personal property or real estate, whether for obligations in excess of $25,000 or not, and whether for terms in excess of four months or not, are covered by the Equal Credit Opportunity Act. It is true that the majority has not said that such an expansion of coverage will follow from their decision, but it certainly is compelled by its rationale. [798]

It is true that ending discrimination in all leasing is a highly desirable policy goal. It cannot sensibly be argued, however, that Congress intended to accomplish that goal by any of the provisions found

under the umbrella of the Consumer Credit Protection Act. The only leases brought within its coverage, for purposes of disclosure, are a limited group of personal property leases. It is impossible to accept the proposition that Congress, by its silence in passing the Consumer Leasing Act or amending the Equal Credit Opportunity Act in 1976, somehow expanded the latter Act to a coverage far beyond that accorded to leases under any provisions it had thus far enacted.

The majority may say that it would not so expand the coverage of the Equal Credit Opportunity Act, but would confine the coverage to consumer leases. The fact that the majority's rationale dictates a more expansive application, however, suggests that the majority has simply interpreted the statute incorrectly. The interpretation that effectuates the intent of Congress, I

submit, is that "credit transactions" do not include leases, and that leases are not deferred debts but payments (normally in advance) for contemporaneous use. However desirable the result reached by the majority, and I emphasize that it is desirable, it can properly be reached only by Congress. I therefore regretfully dissent.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICIA ANN BROTHERS, Plaintiff-Appellant, vs. FIRST LEASING, and DOES 1 through 20, inclusive, Defendants-Appellees.	)	NO. 82-4584 (Northern District, California) ORDER AMENDING OPINION

Before: ALARCON, CANBY, and REINHARDT, Circuit Judges

The panel as constituted has voted to amend its opinion as follows:

At slip op. page 327, replace footnote 1 with the following:

For purposes of reviewing the district court's dismissal for failure to state a claim upon which relief can be granted, we must accept all material allegations in Brothers' complaint as true and must construe them in the light most favorable to her. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (plurality opinion); Benson v. Arizona State Bd. of Dental Examiners, 673, F2d 272, 275 n.7 (9th Cir. 1982); Lodge 1380, Bhd. of Ry., Airline & Steamship

Clerks v. Dennis, 625 F.2d 819, 825 (9th Cir. 1980).

Here, Brothers applied for the lease in her own name, rather than in the name of her business, Brothers Insurance Service. In addition, it appears that Brothers, by applying separately for credit instead of jointly with her husband, sought to establish her own credit. Accordingly, for purposes of our review here, we infer from her allegations that Brothers sought to lease the automobile for her personal use. Even if we were unable to infer that from her allegations, we would be required to conclude that the district court erred in dismissing the complaint with prejudice. If the complaint failed to indicate whether or not Brothers applied for the lease of the vehicle for her personal use, the district court should at most have dismissed the claim with leave to amend and thus have afforded Brothers the opportunity to attempt to cure any defect in the pleading.

At slip op. page 328, replace footnote

3 with the following:

It is necessary on this appeal to hold only that the ECOA applies to consumer leases. We note, however, that we have previously held that, absent a showing that state law requires the signature to create a valid lien, requiring a spouse's signature on credit instruments is unlawful discrimination on the basis of martial status under the ECOA. Anderson v. United Finance Co., 66 F.2d 1274, 1276-77 & n.1 (9th Cir. 1982). In Anderson, we did not reach the question "whether spouses could

be compelled to sign notes if state law required their signature to create a valid lien." Id. at 1276 n.1 (citation omitted).

At slip op. page 329, delete the last sentence in footnote 7, and substitute the following:

Construing the material allegations in the complaint in the light most favorable to her, as we must for purposes of reviewing a dismissal for failure to state a claim upon which relief can be granted, see note 1 supra, we infer that Brothers applied for a consumer lease under the CLA. More specifically, we construe the pleadings as relating to a proposed lease involving an obligation of less than $25,000, for a period exceeding four months, and for personal or family purposes.

[Filed March 14, 1984.]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICIA ANN BROTHERS, Plaintiff-Appellant,	)	NO. 82-4584
vs.	)	(Northern District,
FIRST LEASING, and DOES 1 through 20, inclusive,	)	California)
	)	ORDER
Defendants-Appellees.	)	

Before: ALARCON, CANBY, and REINHARDT, Circuit Judges

The motion for leave to file amicus curiae brief of Western Vehicle Leasing Association is denied.

Judges Alarcon and Reinhardt have voted to deny the petition for rehearing, and Judge Canby has voted to grant the petition for rehearing. The panel has unanimously voted to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc hearing, and no judge

of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The petition for reharing is denied and the suggestion for rehearing en banc is rejected.

[Filed March 28, 1984.]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PATRICIA ANN BROTHERS, Plaintiff, vs. FIRST LEASING, etc., et al Defendants.	NO. C 82 1222 RHS JUDGMENT

The Motion of Defendant FIRST LEASING CORPORATION for an Order of Dismissal came on regularly for hearing on October 1, 1982. Appearing as attorneys were: Ralph N. Mendelson, Esq., for Defendant, and William T. Murphy, Esq., for Plaintiff. Satisfactory proof having been made, this Court finds that the proposed open-ended automobile lease which Plaintiff sought to enter into with Defendant is not a credit transaction and is not within the scope of the Equal Credit Opportunity Act, 15 U.S.C. §1691, et seq., therefore,

IT IS ADJUDGED, ORDERED AND DECREED that Plaintiff PATRICIA ANN BROTHERS take nothing by way of her complaint filed herein and that this action be dismissed for failure to state a cause of action for which relief can be granted.

DATED: 13 Oct. 1982

ROBERT H. SCHNACKE
UNITED STATES DISTRICT
COURT JUDGE

[Entered in Civil Docket October 21, 1982.]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PATRICIA ANN BROTHERS, Plaintiff, vs. FIRST LEASING, etc., et al Defendants.	NO. C 82 1222 RHS DECLARATION OF GEORGE LYON IN SUPPORT OF MOTION TO DISMISS

I, GEORGE LYON, declare:

1. I am Executive Vice President of Defendant, FIRST LEASING CORPORATION (hereinafter "Defendant"), sued herein as First Leasing.

2. Torvick Mercedes Benz, an automobile dealership, through its employee, Ron Kowalski, telephoned Defendant on or about 1:10 p.m. on January 25, 1982, and spoke with Ms. Barbara Perreira, an employee of defendant. He provided her with information which he represented as having been obtained from and in connection

with the lease application of Plaintiff, PATRICIA ANN BROTHERS (hereinafter "Plaintiff"). Plaintiff was applying to lease a Mercedes Benz 300-DT, Model Year 1982, purchase price of $27,500.00, for a term of forty-eight (48) months at a monthly lease payment of $339.17.

3. Ms. Perreira took the information provided by Mr. Kowalski and wrote it down on Defendant's application form. A true and correct copy of said form, created in the ordinary course of Defendant's business, is attached hereto as Exhibit "A" and incorporated herein by this reference (hereinafter the "Application").

4. Had a lease been made by Defendant to Plaintiff under the terms of the Application, upon termination of the lease, the total of the lease payments which Plaintiff would have made under the contract would have been approximately $15,848.16.

The residual value of the automobile at lease end would have been approximately $15,400.00.

5. Had Plaintiff entered in to a consumer lease with Defendant with respect to the automobile described in the Application Plaintiff would have been required to guarantee the residual value of $15,400.00, and would be required to pay Defendant the difference between the residual value and the sale price of the vehicle when disposed of by Defendant. Plaintiff, like any other individual, would have been permitted to bid on or purchase the vehicle for the residual value of $15,400.00 at lease end.

6. It is the custom and practice of Defendant to be both the registered and legal owner of all leased automobiles. Our automobile lessees appear on the registration form only for the purpose of receiving the annual license renewal. The

registration of the leased vehicle if leased to Plaintiff would have read:

"Owner: First Leasing Corporation
c/o Patricia Ann Brothers, etc."

7. It is the standard procedure of Defendant to run a TRW credit check on all applicants and, if community property is listed as an asset of the applicant, then also to run such a credit check on the spouse of the applicant.

8. It is the custom and practice of Defendant and, based upon my information and belief, the automobile leasing industry as a whole, to reject an applicant for a lease if such credit checks indicate a bankruptcy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: August 23, 1982

GEORGE LYON,
Executive Vice President
FIRST LEASING CORPORATION

First/Leasing Application for Lease Credit

Arranging dealer: Torvick MBZ. Vehicle make: MBZ.

Model: 300 DT. Year: 82. Term: 48.

Selling price: 27,500. Mo. lease payment: 339.17

(If selling price exceeds $25,000 complete reverse side as well.)

I understand that I may apply for this credit in my name alone, without my spouse or any other person, regardless of my marital status. I am applying in my name alone.

If applicant is married and lives in a community property state, such as California, all questions relating to each spouse must be answered, even if this is an application for credit in the applicant's name alone.

APPLICANT: Full name: Patricia A. Brothers. Birth date: 9/7/47. Social Security No.: 33038119. Married. No. dependents: 2.

Driver's License No.: E0313437. Current address: 643 St. Mary Dr., Santa Rosa, 95405. How long: 3 1/2 yrs. Home phone: 539-0125. Previous address: 3112 Maple Ave., 92066. How long: 3 1/2 yrs. Business phone: 544-4726. Employer name and address: Brothers Insurance, 1175 4th St., Santa Rosa. How long: 3 years. Occupation: self. Previous employer name and address: L.A. City Schools, LA. How long: 2 yrs. Occupation: teacher. Nearest relative not living with you full address: [Blank.] Phone no.: [Blank.] Relationship: [Blank.] Friend full address: [Blank.] Phone: [Blank.]

SPOUSE: Full name: James A. Garske. Birth date: 1/9/44. Social Security No.: 530229803. Driver's License No.: NO440109. Home phone: Same. Current address: Same. How long: [Blank.] Business phone:

544-4730. Employer name and address: Spencer Douglas Insurance, Santa Rosa. How long: 1 yr. Occupation: Consultant. Previous employer name and address: [unclear], 842-4 Mesa Ridge, Sparks, Nevada. How long: 10 yrs. Occupation: 842-4.

INCOME: You do not have to reveal income from alimony, child support or separate maintenance unless you want it considered in evaluating this application. Applicant's monthly gross income from employment: $2,200. Applicant's other income (monthly): [Blank.] Source: 1,700 property and child support. Spouse's monthly gross income from employment: $3,000. Spouse's other income (monthly): [Blank.] Source: Owns p. Is any of this income likely to be reduced before the requested lease is paid off? [Blank.]

FINANCIAL INFORMATION: If you are married, we will assume that all assets and income are community property and all debts are community obligations unless otherwise shown in the asset and debt identification section below.

Bank name and address: Calif. Canadian, 4th St., Santa Rosa. Checking, Savings. Account no. (1) 10026177, (2) 10024510, (3) 6010-017440, (4) 102-001595, (5) 102002309. Other name and address: Home Svgs & Ln, Santa Rosa. Savings. Account no.: no #.

Have you ever filed for bankruptcy in the past 14 years or voluntarily surrendered or had a vehicle or any other item repossessed? [Blank.]

Residence: Buying or own. Lienholder: Glendale Fed Svgs. Balance owing: $55,000. Mo. payment or rent: $569.

List all other debts (banks, credit unions, finance companies, credit cards, stores, alimony, child support, separate maintenance): M/C (2). Balance owing: 0. Mo. payment: 0. Visa, paid monthly. Gold card. Balance owing: 0.

Are all debts listed: yes.

Have you or your spouse ever obtained credit under a different name: [Blank.]

ASSET AND DEBT IDENTIFICATION: List all assets and income which aren't community property and debts which aren't community obligations and show how held, separate property, joint tenancy, tenants-in-common. [Blank.]

[Note at bottom of page] Previous job. Cotton Belt Insurance, 11001 Lk forest Ld UP 4 years.

5 Consumer Credit Guide (CCH) ¶42,090

LEASES SUBJECT TO REGULATION B

This will respond to your letter * * * in which you ask whether Regulation B applies to vehicle lease agreements. The following is an unofficial interpretation of the regulation.

Regulation B applies to all aspects of a "credit" transaction. Accordingly, in the staff's opinion, a lease agreement is not subject to Regulation B unless a "credit sale" results from the transaction. A lease becomes a "credit sale" when, under its terms, a customer contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the customer will become, or for no other or for a nominal consideration have the option to become,

the owner of the property upon full compliance with the obligations under the lease agreement.

Excerpts from FRB Letter of August 17, 1977, No. 7, by Anne Geary, Manager, Equal Credit Opportunity Section.

5 Consumer Credit Guide (CCH) ¶42,114

SPOUSE'S SIGNATURE ON RENTAL CONTRACT

Thank you for your letter of * * *. You ask whether it would violate the Equal Credit Opportunity Act to require a spouse's signature on a rental contract or a lease purchase contract. I am enclosing a copy of the Act that you may find helpful.

The Equal Credit Opportunity Act and Regulation B, which implements it, forbid discrimination in any aspect of a credit transaction on the basis of sex and marital status, as well as other factors.

The first question that you need to decide is whether the transactions that you describe are credit within the meaning of the Act. Section 202.2(j) of Regulation B defines credit as "the right . . . to defer payment of a debt, incur debt and defer its payment, or purchase property or services

and defer payment therefor." Generally, a lease agreement would not be credit within the meaning of the Act. The purchase of a piano with payments being deferred generally would be credit to which the provisions of the Act would apply.

If you decide that a particular transaction is a credit transaction, you should refer to Section 202.7(d) of Regulation B which describes the circumstances under which a creditor may require the signature of a spouse or other person. In a transaction involving secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default.

Generally, if one spouse is applying

for a loan to purchase a piano, if the other spouse will have an ownership interest in the piano, and if the piano is being used as security, the creditor could require the signature of the non-applicant spouse on the security agreement, but not on the promissory note, in order to make the piano available as security.

These comments are informal staff opinions which are not binding on the Commission.

Excerpts from Federal Trade Commission Informal Staff Opinion, February 1, 1984, by Sandra M. Wilmore, Attorney.

Board of Governors of the Federal Reserve System Official Staff Interpretation, FC-0082, 42 Fed. Reg. 31431 (1977)

§226.15(b) Disclosure of formula for determining amount owed by lessee at early termination is permissible, so long as amount resulting from application of formula is not labelled "estimated value" of vehicle.

Itemized "total lease obligation" consists of nonrefundable cash payments made at consummation, portion of scheduled periodic payments attributable to rent (excluding maintenance and insurance charges), and estimated value of property at end of term.

§226.15(b)(15) Rebuttable presumption and limitations on lessee's liability concerning value of property do not apply to value of property and lessee's liability at early termination.

June 3, 1977.

This is in response to your letter of * * *, in which you raised several questions concerning the Consumer Leasing Act and the amendments to Regulation Z which implement it.

Your client engages in vehicle leasing, usually with lease terms of 36 or 48 months. After the first six months of the lease term, your client would like to give the lessee the right to terminate the lease on prior written notice. Your client further wants the right to terminate the lease upon failure by the lessee to pay the monthly rental charge or upon other breach of the terms or conditions of the lease. If either the lessee or the lessor exercises its right to terminate the lease prior to the end of the full term, it is your client's desire that the lessee be responsible for paying the difference between the "estimated value" of the vehicle at the

time of termination and the realized value of the vehicle upon its subsequent sale. You state that while it is possible for your client to estimate the value of the vehicle at the end of the lease term, it is impossible to estimate its value for any period prior to this point since it is unknown when a breach will occur or when a lessee will exercise its right to early termination.

You propose the use of a formula to determine the "estimated value" of the vehicle at early termination by the lessee or by the lessor. The use of this formula will determine a "monthly depreciation reserve" by subtracting the estimated value of the vehicle at the end of the lease term from the value of the vehicle at consummation and dividing the remainder by the number of months in the lease term. For example, if the value of the vehicle at consummation is

$5,600, and it is estimated that the value of the vehicle at the end of a 36-month lease term will be $2,000, the estimated depreciation of the vehicle over the lease term is $3,600. The monthly depreciation reserve would be $100, calculated by dividing $3,600 by 36 months. Thus, if one assumes that the lease is terminated after 12 months by either the lessor or lessee, the "estimated value" of the vehicle on that date would be calculated by multiplying the monthly depreciation reserve ($100) times the number of months of the term which have expired (12) and subtracting that figure ($1,200) from the value of the vehicle at consummation ($5,600). The lessee will then be responsible for paying the difference between that amount ($4,400) and the realized value of the vehicle. The lessee will also be responsible for any delinquent lease payments to that date.

On the basis of the facts set forth above, you ask the following questions:

1. Does disclosure of the above formula for determining the amount owing by the lessee upon early termination of the lease by either the lessee or the lessor comply with §226.15(b)(12) of Regulation Z, which requires disclosure of, inter alia, "the amount or method of determining the amount of any penalty or other charge for early termination?"

It is the staff's opinion that disclosure of the formula described above as the method of determining the amount owing by the lessee at early termination by either party is permissible under §226.15(b)(12). The monthly depreciation reserve figure merely reflects what straight line depreciation would be on a monthly basis over the lease term. It is staff's understanding that motor vehicles do not depreciate on a

straight line basis; typically, a vehicle will have depreciated at the end of three months in excess of $300 (using the example set forth in this letter) since vehicles depreciate at an accelerated rate at the beginning of their useful life. Thus, the use of a straight line monthly depreciation reserve in calculations which arrive at an "estimated value" of the vehicle over the term will not actually approximate the value of the vehicle, particularly during the first portion of the lease term. Therefore, the staff wishes to add a caution that labelling the amount resulting from the application of the proposed formula as the "estimated value" of the vehicle may not comply with §226.6(f) of Regulation Z, which permits estimates of required information when that information is unknown or unavailable to the lessor, but only when the estimate is reasonable

and based upon the best information available to the lessor.

2. What is the precise meaning of the term "itemized total lease obligation" as it is required to be disclosed under §226.15(b)(15)(i)? Are the actual amounts which are to be disclosed to the lessee as the total lease obligation equal to the amounts disclosed under §226.15(b)(2) through §226.15(b)(5)?

It is the staff's opinion that the definition of "total lease obligation" in §226.2(rr) of the regulation is the itemized total lease obligation which should be disclosed under §226.15(b)(15)(i). Section 226.2(rr) defines "total lease obligation" as "the total of (1) the scheduled periodic payments under the lease, (2) any nonrefundable cash payment required of the lessee or agreed upon by the lessor and the lessee or any trade-in

allowance made at consummation, and (3) the estimated value of the leased property at the end of the lease term."

The disclosure would include those portions of the §226.15(b)(2) disclosure which are nonrefundable cash payments required of or agreed upon by the lessee (including any trade-in allowance), the total amount of periodic payments disclosed under §226.15(b)(3), and the estimated value of the leased property at the end of the lease term. The Board has stated that, for purposes of the definition of "total lease obligation" and the calculations of which it is an element, the "term 'scheduled periodic payments under the lease' includes that portion of the payments attributable to depreciation, cost of money, lessor's profit and taxes, but excludes, in leases where such charges are included in the periodic payments, charges for maintenance

and insurance," 41 FR 45537, Friday, October 15, 1976. The itemized total lease obligation should not include any items disclosed under §226.15(b)(4) and (5) or any refundable security deposit disclosed under §226.15(b)(2).

3. Does §226.15(b)(15)(ii), which establishes a rebuttable presumption that the estimated value of the leased property at the end of the term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average monthly payment, and precludes the lessor from collecting the amount of excess liability from the lessee without court action in which the lessor pays the lessee's attorney's fees, apply to early termination of the lease by the lessor or lessee?

It is the staff's opinion that §226.15(b)(15)(ii) applies only to the

calculations based on the estimated value of the leased property at the end of the lease term and is inapplicable to early termination of the lease. The subparagraph applies only to the "estimated value of the leased property at the end of the lease term" and does not mention the value of the property at early termination.

This is an official staff interpretation of Regulation Z, issued in accordance with §226.1(d)(3) of the regulation and limited to the facts outlined herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, June 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board

15 U.S.C. §1667 (1982). Definitions

For purposes of this part -

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g) of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

* * *

15 U.S.C. §1667d (1982).
Civil liability of lessors

* * *

(b) Additional grounds for maintenance of action; definition

Any lessor who fails to comply with any requirement imposed under section 1667c of this title with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 1640 of this title. For the purposes of this section, the term "creditor" as used in sections 1640 and 1641 of this title shall include a lessor as defined in this part.

* * *

15 U.S.C. §1691a (1982).
Definitions; rules of construction

* * *

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

* * *